



**TESTIMONY ON 17-H 5300, RELATING TO HUMAN TRAFFICKING  
FEBRUARY 14, 2017**

The Sex Workers Project at the Urban Justice Center is excited to see the efforts of Rhode Island to comprehensively address human trafficking through bill H5300, which would make strides towards protecting more victims of trafficking in your state.

The Sex Workers Project provides client-centered legal and social services to individuals who engage in sex work in New York City. One of the first programs in the nation to assist survivors of human trafficking, the Sex Workers Project has pioneered an approach to service grounded in human rights, harm reduction and in the real life experiences of our clients. Our professional service providers are multi-lingual, non-judgmental and bring more than ten years of experience. Our attorneys help clients remain in stable housing, access safer working conditions and employment options, protect their legal rights in family court, clear their criminal records, secure legal immigration status, and fight police misconduct and hate crimes. Our social workers provide long term supportive therapy and case management, creating best practices for an emerging field. We also maintain the country's first LGBTQ anti-trafficking program, working to support clients who experience multiple layers of marginalization. We participated in drafting and lobbying for New York's comprehensive anti-trafficking law in 2007, and co-authored New York's Vacating Convictions for Trafficked Persons law in 2010, the first in the nation. We also regularly advise other state legislatures and the federal government on anti-trafficking policy.

There are many provisions in this legislation that we fully support. We support post-trafficking relief for victims in the forms of restitution, civil action, policies to sign T and U supplements, and the vacatur of criminal records. We applaud the provisions that will protect minors from the trauma of arrest and streamline the process of accessing services.

We would also like to highlight some of the provisions which give us pause, and hope that they can be reconsidered or modified, in the interest of developing an effective and comprehensive anti-trafficking law.

- The bill creates the crime of “sexual servitude of a minor” for which the mens rea is strict liability. We are concerned that the broad definition of sexual servitude (including sexual performance) will impose liability on those who do not induce others into commercial sex through force, fraud or coercion, who reasonably

believe the person they are patronizing is an adult, and who engage in otherwise legal activities, such as hiring a dancer. Considering the penalty for sexual servitude of a minor could reach up to fifty years imprisonment, the statute should restrict the criminalized action to sexual contact and should raise the mens rea to “knowledge” of the minor’s age. The intention of this law is to fight human trafficking, and creating even broader laws which expand criminalization to those with no intent to engage in trafficking is not an effective solution.

- The bill raises the level of offense of patronizing an adult sex worker from a misdemeanor to a felony (Page 5 Lines 1-3). This is an unnecessary change that punishes consensual, adult activity. This provision does not contribute to the purpose of the law, which is to support survivors and combat trafficking in persons. This provision conflates trafficking with prostitution, which will have unintended consequences: a misallocation of efforts and resources away from identifying and supporting victims. Additionally, the conflation of prostitution and human trafficking entirely ignores the issues around forced labor, leaving those exploited in every other industry deprioritized and under recognized.
- We support barring the use of past sexual behavior or reputation of a victim of trafficking as evidence in a trafficking case (Page 7, Lines 5-11). This is an affirmative step in protecting the lives and rights of survivors. We would recommend the expansion of this provision to also include past arrests and convictions for prostitution and prostitution-related crimes. In our experience, many victims have prior involvement in the sex trade, which only makes them more vulnerable to exploitation and trafficking. Explicitly barring introduction of these convictions would support the rights of victims, and enable more effective prosecutions.
- An affirmative defense to prostitution charges for victims of trafficking (Page 7, lines 25-27) is important to include, but modifications are necessary to ensure it does not pose challenges in practice. We suggest the following changes:
  - Expansion of the provision to be accessible to all victims of trafficking, including labor trafficking victims who are forced to commit crimes;
  - Expansion of the provision to encompass all crimes, as when victims are charged with higher level crimes the investigation and relationship-building between a defendant and defense attorney is more likely, and therefore the survivor is more likely to disclose their victimization;
  - Inclusion of a provision clarifying that the existence of an affirmative defense does not preclude an individual from later requesting vacatur of

their record, once identified as a victim. It takes a great deal of trust and long-term relationship building with service providers to disclose a trafficking situation. It is incredibly rare that a survivor is able to disclose in the initial prostitution case, or that judges, public defenders and prosecutors are properly and comprehensively trained to identify a victim during the short process afforded low level crimes. It is important to ensure that survivors maintain the right to vacate their criminal convictions long after they are sustained, as a victim can be trafficked for many years until they escape.

- We support the inclusion of a remedy for victims of human trafficking to vacate criminal records incurred during their trafficking situation (11-67.1-17). As drafters of the first bill to create this remedy in New York State, we know how essential it is for those trafficking victims looking to rebuild their lives. Having practiced under this law and supported its replication in many other states, we recommend adjusting this remedy to make it more comprehensive for victims of trafficking.
  - Currently, the provision only includes vacating convictions for prostitution and loitering for the purposes of prostitution. In our experience, trafficking victims may incur a range of charges connected to their trafficking situations. We recommend expansion of the provision to encompass all convictions incurred as a direct result of being a victim of trafficking.
  - We also would like to clarify that this is a remedy available to all victims of trafficking, both sexual exploitation and forced labor.

We commend the legislature of Rhode Island for their commitment to the creation of a robust and effective anti-trafficking statute.

We greatly appreciate the Committee's consideration of our testimony.